IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12113 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI MOTIBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2001

ORAL JUDGEMENT

#. The learned counsel for the petitioner challenging the order of the detention authority detaining the petitioner as a dangerous person raised manifold contention but as this petition deserves to be allowed

only on one ground it is not necessary and desirable in the larger interest i.e. to save the valuable and precious judicial time of the courts to make reference of those arguments, consider and record finding thereon.

#. It is contended that the statements of the witnesses recorded under section 161 of the Cr.P.C., 1973 in the criminal complaints the copies thereof were not given to the petitioner despite request has been made also in the representation filed against the detention order. Copy of the representation is there on the record of this petition at page No.22. Therein I find that the petitioner had demanded the copies of the statements of witnesses recorded under Section 161 of the Cr.P.C. In para No.10 and 14 of the Special Civil Application the petitioner averred in detail regarding this contention.

#. This petition was admitted by the court on 27.11.2000 and till date the respondents have not cared to file reply to the Special Civil Application. In view of this fact the averments made by the petitioner in para Nos. 10 and 14 of the Special Civil Application and representation at page 22 stand uncontroverted. It is unfortunate that the officers of the impersonal machinery State of Gujarat takes these things very casually, lightly and in a routine manner. From this approach of the officer of the State of Gujarat twofold inferences possibly can be drawn viz. (i) that they are careless, reckless, negligent and totally not concerned with their duties which they owe to the public, and (ii) they acted in such a manner and fashion so as to extend favour to the detenu that is to say to make it easy for him in the court to get rid of this detention order. From different corners it is complained that the courts in detention matters release the detenu. It is unfortunate that the people are not known or made known of the realities that out of 100 detention matters in more than 90 cases the orders are quashed and set aside as the respondent State of Gujarat and its officers are not filing reply and as a result of which the grounds made on factual aspects are to be accepted which results in quashing and setting aside of the detention order. This is the way possibly by which they fulfill their quota of the detention orders to be passed under the PASA that is say to highlight the good figures amongst the public. But this is nothing but only what I feel prima facie a statistical quota. But reality seems to be otherwise. It is not the only case but I am seeing every day from the first day of this work assigned to me, the State of Gujarat and its officers are least concerned of these matters and nobody bothers to file reply to the Special Civil Application. If

ultimately the detenu are to be set at liberty due to noncooperative attitude of the officers of the State of Gujarat or as they are reckless, careless and unmindful of their duties which they owe to the public or where for some other consideration they act contrary to the interest of the state then what is the use, purpose and object of enacting this statute. This statute has been enacted so that to prevent the acting of the unscrupulous persons in any manner prejudicial to the maintenance of public order. But this underline object and purpose of this Act stands totally frustrated at the hands of the officers of the impersonal machinery of State of Gujarat because of their reckless, careless, negligent and unmindful of their duties which they owe to the peoples or where they act for some other consideration. However, it is not a matter to be looked into and taken care of by this court. But, this court cannot resist itself from expressing its view that if the House is not corrected by the State of Gujarat in respect of these matters at an early date this Act will nothing but a piece of legislature in paper and not of any effect and force.

#. The learned counsel for the respondent in the absence of reply to this factual averments made in this petition unable to contest this petition. He has been rendered helpless by none other than the officers of the State of Gujarat either because of their recklessness, carelessness, negligence and unmindful to their duties which they owe to the public or for some other consideration. It is a case where as a result of nonsupply of this vital document the petitioner is deprived of his valuable right of making effective representation as guaranteed under Article 22(5) of the Constitution of India to him.

#. In the result, this Special Civil Application succeeds and the same is allowed. The order of detention dated 18.9.2000 is quashed and set aside and the petitioner Sureshbhai Motibhai Vasava-detanu be set at liberty, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.10,000/= as the costs of this petition to the petitioner.

#. The learned counsel for the respondents opposed awarding of the cost of this litigation to the petitioner. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such an objection by the learned counsel for the respondents. Otherwise also I consider it to be a fit case to award the costs as litigation in the court

heavily costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.10,000/= as a fees from the petitioner to provide him her professional services in this case and this amount has been paid by the petitioner to her. It is the question of the personal liberty and the petitioner is free to engage any advocate of his choice. There is no law which requires that he has to engage an advocate which charge lesser fees. Either in the Advocates Act or any other law schedule of fees to be charged by an advocate in a given category of case has not been prescribed. In the absence of such a legislation the Advocates are free to charge any amount of fee in case for rendering their professional services. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This is not the only money which would have spent by the petitioner, but in addition to this he would have spent money for typing charges, court fees and other misc. Expenses of filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. It's only fault may be that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money and this money has to be paid to the petitioner by the State of Gujarat not for its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever officer is found responsible for not filing of the reply in the matter in the inquiry this amount of the cost has to be recovered from him. This inquiry is to be completed within a period of six months from the date of receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is recovered from the erring officers its House will not be corrected.

(S.K.Keshote, J.)

*Pvv